

**REMARKS**

Claims 1 – 26 have been examined. Claims 1 – 16 and 20 – 26 stand rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Pat. No. 5,530,754 (“Garfinkle”) in view of U.S. Pat. No. 6,532,589 (“Proehl”).

It is respectfully believed that certain comments in the Office Action reflect a misunderstanding of some claim limitations. Independent Claims 1 and 24 have been amended to clarify the interpretation of the claims, as is the following discussion.

First, the limitation of Claim 1 that recites “transmitting a first set of programs in real time according to a schedule of programming” requires that the programs themselves be transmitted; this limitation does not correspond merely to transmitting the programming schedule, such as in the form of a program guide. Thus, Applicants respectfully disagree with the statement in the Office Action that the “first set of programs” reads on the entire schedule of programs transmitted as an electronic program guide in Proehl (Office Action, pp. 2, 3, emphasis added). The transmission of the electronic program guide only transmits a description of the schedule of programming but does not correspond to “transmitting [the] first set of programs” themselves.

With this clarification, Applicants also disagree that there is any motivation to modify the disclosure of Garfinkle related to transmitting a first set of programs in real time to do so according to a schedule of programming. Garfinkle is directed specifically to a video-on-demand system (Garfinkle, Col. 1, ll. 8 – 11), which has as its characteristic advantage the ability to *avoid* the limitations imposed on customers by transmission according to a schedule of programming. While traditional scheduled programming limits customers to viewing programs only when they are transmitted, video-on-demand advantageously allows them to view programs at any time they wish. To modify Garfinkle to transmit programs according to a schedule of programming would thus render Garfinkle unsatisfactory for its intended purpose of making programs available “on demand,” a factor that strongly evidences that the proposed modification is *not* obvious. MPEP 2143.01.

It is further noted that this remains true even with the recognition in the Office Action that Proehl teaches the desirability of integrating transmission of an electronic program guide with record and playback functions of video recorders. In particular, what Proehl teaches is that the electronic program guide may be used to “schedule automatic tuning to future programming, automatic reminders of future programming, and automatic recording of future programming” (Proehl, Col. 6, l. 66 – Col. 7, l. 2, emphasis added). All of the discussion in Proehl related to VCR functions is directed to the ability to use the electronic programming guide to perform functions with future programming; even modifying Garfinkle according to this teaching would still dilute the ability to provide programs “on demand,” which is the central focus of Garfinkle.

Second, in construing the limitation requiring that “at least one of the first set of programs [have] a counterpart in the second set of programs,” the Office Action points to the disclosure in Garfinkle of making lead-ins or trailers available. The claim language is intended to require that at least one of the first set of programs that is transmitted in real time has a substantially identical copy that is stored on the server. Such an arrangement provides for transmission of broadcast programming according to a defined schedule, with some of the broadcast programs being available to be played on demand under a user’s control by also being stored on the server (*see, e.g.*, Application, p. 5, ll. 6 – 13 describing the general functionality of the “club”). Independent Claim 1 has been amended to preclude the interpretation presented in the Office Action that a counterpart program may be a lead-in or trailer by requiring that “the counterpart in the second set of programs [be] substantially identical to the at least one of the first set of programs.” A similar amendment has been made for such clarification purposes in independent Claim 24. It is believed that the language of independent Claim 21 already requires such substantial identity by reciting that “at least some of [the set of programs transmitted to a user according to a schedule of programming] are configured also to be available under the control of the user.”

For these reasons, it is respectfully believed that there is neither a motivation to modify Garfinkle as suggested and that the combination of Garfinkle with Proehl in any event does not disclose the claimed invention. In brief, the focus of Garfinkle on providing a video-

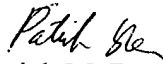
on-demand system is fundamentally at odds with providing a program guide to describe a fixed programming schedule that is the focus of Proehl. The specific goal of a video-on-demand system is to avoid the constraints imposed by scheduled programming as embodied in a program guide.

### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

  
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